

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 150/2018**

% **12th February, 2018**

NANDAN SINGH Appellant

Through: Ms. Sunita Arora, Advocate.
versus

GOPAL SINGH DANGWALA & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 5443/2018 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

CM No. 5444/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is condoned.

CM stands disposed of.

RFA No. 150/2018

1. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the trial court dated 23.9.2017 by which

the trial court has decreed the suit for partition of 120 sq. yards of the property bearing no. L-10, Gali No. 3, Jaiprakash Nagar, Ghonda, Delhi but has dismissed the suit with respect to the remaining 65 sq. yards area, and which area as per the appellant/plaintiff was also jointly owned by the appellant/plaintiff with the respondent no.1/defendant no.1/brother.

2. There is a very limited issue which is called upon for decision in this Regular First Appeal because the suit for partition has been decreed with respect to the property L-10 for 120 sq. yards. It is not disputed that the title documents executed by the erstwhile owner Sh. Tula Singh in favour of the appellant/plaintiff and respondent no.1/defendant no.1 is with respect to 120 sq. yards and not 185 sq. yards. Once therefore the title documents are for only 120 sq. yards executed by Sh. Tula Singh in favour of the appellant/plaintiff and the respondent no.1/defendant no.1, trial court in my opinion has committed no error in holding that the appellant/plaintiff and the respondent no.1/defendant no.1 were joint owners only of 120 sq. yards and not 185 sq. yards.

3. I may also note that the respondent no.1/defendant no.1

has proved in his favour the power of attorney Ex.DW1/A executed by owners of 65 sq. yards, and who were sons of Sh. Devi Dutt namely Sh. Dharam Dutt, Sh. Bacchi Ram and Sh. Krishna Nand, whereas the appellant/plaintiff was not able to substantiate his case of co-ownership of 65 sq. yards along with respondent no.1/defendant no.1. Appellant/plaintiff may have claimed that he did not have the title documents of 65 sq. yards, however once respondent no.1/defendant no.1 proved that he had purchased 65 sq. yards from Sh. Dharam Dutt, Sh. Bacchi Ram and Sh. Krishna Nand by virtue of a power of attorney Ex.DW1/A then onus shifted upon the appellant/plaintiff to show that 65 sq. yards was jointly purchased by the appellant/plaintiff with the respondent no.1/defendant no.1 and in this regard no evidence whatsoever was led by the appellant/plaintiff which a court can believe.

4. Learned counsel for the appellant/plaintiff sought to argue that Sh. Tula Singh who had executed the title documents for property L-10 deposed as PW-2 in favour of the appellant/plaintiff, and therefore, it should be held that appellant/plaintiff is also a co-owner with respondent no.1/defendant no.1 with respect to 65 sq.

yards, however I cannot agree because the minimum which the appellant/plaintiff ought to have done was to show that the ownership of 65 sq. yards in addition to 120 sq. yards was with Sh. Tula Singh and not with Sh. Dharam Dutt, Sh. Bacchi Ram and Sh. Krishna Nand which has not been done and therefore the trial court has rightly arrived at a conclusion that the appellant/plaintiff is not a co-owner with the respondent no.1/defendant no.1 with respect to 65 sq. yards of land which was purchased by the respondent no.1/defendant no.1 from Sh. Dharam Dutt, Sh. Bacchi Ram and Sh. Krishna Nand.

5. Learned counsel for the appellant/plaintiff argues that the power of attorney Ex.DW1/A is not properly notarized, but even if that be so at best that will show that the power of attorney is not notarized but not the fact that the power of attorney was never executed by Sh. Dharam Dutt, Sh. Bacchi Ram and Sh. Krishna Nand in favour of the respondent no.1/defendant no.1/Sh. Gopal Singh.

6. There is no merit in the appeal. Dismissed.

FEBRUARY 12, 2018/ib

VALMIKI J. MEHTA, J